

AMENDED IN SENATE APRIL 9, 2007

**SENATE BILL**

**No. 810**

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**Introduced by Senator Corbett**

February 23, 2007

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An act to amend Section 19195 of the Revenue and Taxation Code, relating to tax administration; add and repeal Section 23649.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 810, as amended, Corbett. ~~Tax administration: Franchise Tax Board: public disclosure of tax delinquencies. The Corporation Tax Law: credits: green vehicles.~~

*The Corporation Tax Law authorizes various credits against the taxes imposed by that law.*

*This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2007, and before January 1, 2015, in an amount equal to the specified percentage of the qualified property, as defined, that is placed in service in this state by a qualified taxpayer, as defined, during the taxable year.*

*This bill would take effect immediately as a tax levy.*

~~The Personal Income Tax Law and the Corporation Tax Law authorize the Franchise Tax Board to administer and collect taxes imposed by those laws and require the Franchise Tax Board to make publicly available each calendar year a list of the 250 largest tax delinquencies in excess of \$100,000, as specified. Existing law requires the Franchise Tax Board, prior to placing a person's name on the list, to provide written notice to that person, as specified.~~

~~This bill would make nonsubstantive, technical changes to those provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 23649.5 is added to the Revenue and
- 2     Taxation Code, to read:
- 3     23649.5. (a) (1) For taxable years beginning on or after
- 4     January 1, 2007, and before January 1, 2015, a qualified taxpayer
- 5     shall be allowed a credit against the “tax,” as defined in Section
- 6     23036, an amount equal to the applicable percentage of the
- 7     qualified costs of qualified property that is placed in service in
- 8     this state during the taxable year.
- 9     (2) For purposes of paragraph (1), the applicable percentage
- 10    is as follows:
- 11    (A) Ten percent of the qualified costs of the qualified property
- 12    used to manufacture Level 1 green vehicles.
- 13    (B) Eight percent of the qualified costs of the qualified property
- 14    used to manufacture Level 2 green vehicles.
- 15    (C) Six percent of the qualified costs of the qualified property
- 16    used to manufacture Level 3 green vehicles.
- 17    (b) (1) For purposes of this section, “qualified cost” means any
- 18    cost that satisfies all of the following conditions:
- 19    (A) Is a cost paid or incurred by the qualified taxpayer for the
- 20    construction, reconstruction, or acquisition of qualified property
- 21    on or after January 1, 2007, and before January 1, 2015.
- 22    (B) Is an amount upon which the qualified taxpayer has paid,
- 23    directly or indirectly as a separately stated contract amount or as
- 24    determined from the records of the qualified taxpayer, sales or
- 25    use tax under Part 1 (commencing with Section 6001).
- 26    (C) The amount of any capitalized labor costs that are properly
- 27    treated as direct costs of labor within the meaning of Section 263A
- 28    of the Internal Revenue Code, and that are allocable to the
- 29    construction or modification of property described in subparagraph
- 30    (A) of paragraph (1) of subdivision (b).
- 31    (D) Is an amount that is included in the adjusted basis of the
- 32    qualified property pursuant to Article 2 of Chapter 15 of this part

1 *(commencing with Section 24911) for purposes of computing*  
2 *depreciation or amortization deductions under this part.*

3 *(2) “Qualified activity” means the manufacturing of green*  
4 *vehicles or component parts thereof.*

5 *(3) “Level 1 green vehicle” means a motor vehicle that satisfies*  
6 *both of the following conditions:*

7 *(A) Is a plug-in hybrid motor vehicle propelled by an internal*  
8 *combustion engine or heat engine using any combustible fuel, an*  
9 *on-board rechargeable storage device, and a means of using an*  
10 *off-board source of electricity.*

11 *(B) Meets or exceeds either of the following conditions:*

12 *(i) The California super ultra-low-emission vehicle (SULEV)*  
13 *standard for exhaust emissions and the federal inherently*  
14 *low-emission vehicle (ILEV) evaporative emission standard, as*  
15 *defined in Part 88 (commencing with Section 88.101-94) of Title*  
16 *40 of the Code of Federal Regulations.*

17 *(ii) The California advanced technology partial zero-emission*  
18 *vehicle (ATPZEV) standard for criteria pollutant emissions and*  
19 *that is rated at 45 miles per gallon or higher according to the*  
20 *federal highway fuel economy test procedure.*

21 *(4) “Level 2 green vehicle” means a motor vehicle that satisfies*  
22 *any of the following conditions:*

23 *(A) Meets or exceeds the California super ultra-low-emission*  
24 *vehicle (SULEV) standard for exhaust emissions and the federal*  
25 *inherently low-emission vehicle (ILEV) evaporative emission*  
26 *standard, as defined in Part 88 (commencing with Section*  
27 *88.101-94) of Title 40 of the Code of Federal Regulations in a*  
28 *manner that clearly distinguishes them from other vehicles.*

29 *(B) Meets or exceeds the California advanced technology partial*  
30 *zero-emission vehicle (ATPZEV) standard for criteria pollutant*  
31 *emissions and that is rated at 45 miles per gallon or higher*  
32 *according to the federal highway fuel economy test procedure.*

33 *(C) Is a gas-electric hybrid vehicle that was produced during*  
34 *the 2007 model year or earlier and has a combined fuel economy*  
35 *rating of 45 miles per gallon or greater according to the federal*  
36 *highway fuel economy test procedure, and meets California’s*  
37 *ultra-low emission vehicle (ULEV) standard for exhaust emissions.*

38 *(5) “Level 3 green vehicle” means a motor vehicle that meets*  
39 *or exceeds California standards for criteria pollutant emissions*  
40 *and has a combined fuel economy rating of 30 miles per gallon or*

1 greater according to the federal highway fuel economy test  
2 procedure.

3 (6) (A) “Qualified property” means tangible personal property,  
4 as defined in Section 1245(a)(3)(A) of the Internal Revenue Code,  
5 for use by a qualified taxpayer in a qualified activity.

6 (B) “Qualified property” does not include any of the following:

7 (i) Furniture.

8 (ii) Buildings or other inherently permanent structures, including  
9 facilities used for warehousing purposes after completion of the  
10 manufacturing of green vehicles or their component parts.

11 (iii) Inventory, such as component parts acquired for inclusion  
12 in a manufactured green vehicle.

13 (iv) Equipment used to store finished products that have  
14 completed the manufacturing process.

15 (v) Any tangible personal property used in the including  
16 administration, general management, or marketing of green  
17 vehicles.

18 (7) “Qualified taxpayer” means any taxpayer, within the  
19 meaning of Section 23037, that is engaged in the manufacture of  
20 green vehicles.

21 (8) “Combined miles per gallon” is calculated using 55 percent  
22 of city miles per gallon and 45 percent of highway miles per gallon.

23 (9) “Miles per gallon” means that term as it is used in the  
24 federal Fuel Economy Guide.

25 (10) “Manufacture” means the activity of converting or  
26 conditioning property by changing the form, composition, quality,  
27 or character of the property for ultimate sale at retail, including  
28 improvements to tangible personal property that result in a greater  
29 service life or greater functionality than that of the original  
30 property.

31 (c) The credit allowed under subdivision (a) shall apply to  
32 qualified property that is acquired by, or subject to, lease by a  
33 qualified taxpayer, subject to the following special rules:

34 (1) A lessor of qualified property, irrespective of whether the  
35 lessor is a qualified taxpayer, shall not be allowed the credit  
36 provided under subdivision (a) with respect to any qualified  
37 property leased to another qualified taxpayer.

38 (2) (A) For purposes of determining the qualified cost paid or  
39 incurred by a lessee in any leasing transaction that is not treated

1 as a sale under Part 1 (commencing with Section 6001), the  
2 following rules shall apply:

3 (i) Except as provided in subparagraph (B) and clause (ii), the  
4 “qualified cost” upon which the lessee shall compute the credit  
5 allowed pursuant to this section shall be equal to the original cost  
6 to the lessor, within the meaning of Section 24912, of the qualified  
7 property that is the subject of the lease.

8 (ii) The requirement of subparagraph (A) of paragraph (1) of  
9 subdivision (b) shall be treated as satisfied only if the lessor has  
10 made a timely election under either Section 6094.1 or subdivision  
11 (d) of Section 6244 and has paid sales tax reimbursement or use  
12 tax measured by the purchase price of the qualified property, as  
13 defined in paragraph (5) of subdivision (g) of Section 6006. For  
14 purposes of this subdivision, the amount of original cost to the  
15 lessor which may be taken into account under clause (i) shall not  
16 exceed the purchase price upon which sales tax reimbursement or  
17 use tax has been paid under the preceding sentence or under clause  
18 (iii).

19 (B) For purposes of applying subparagraph (A) only, the  
20 following special rules shall apply:

21 (i) The original cost to the lessor of the qualified property shall  
22 be reduced by the amount of any original cost of that property that  
23 was taken into account by any predecessor lessee in computing  
24 the credit allowable under this section.

25 (ii) Clause (i) shall not apply in any case where the predecessor  
26 lessee was required to recapture the credit provided under this  
27 section pursuant to subdivision (e).

28 (iii) For purposes of this section only, in any case where a  
29 successor lessor has acquired qualified property from a  
30 predecessor lessor in a transaction not treated as a sale under  
31 Part 1 (commencing with Section 6001), the original cost to the  
32 successor lessor of the qualified property shall be reduced by the  
33 amount of the original cost of the qualified property that was taken  
34 into account by any lessee of the predecessor lessor in computing  
35 the credit allowable under this section.

36 (C) In determining the original cost of any qualified property  
37 under this paragraph, only amounts paid or incurred by the lessor  
38 on or after January 1, 2007, and before January 1, 2015, shall be  
39 taken into account.

1 (D) Notwithstanding subparagraph (A), in the case of any  
2 leasing transaction for which the lessee is allowed the credit under  
3 this section and thereafter the lessee, or any party related to the  
4 lessee within the meaning of Section 267 or 318 of the Internal  
5 Revenue Code, acquires the qualified property from the lessor, or  
6 any successor lessor, within two years from the date the qualified  
7 property is first used by the lessee under the terms of the lease,  
8 the lessee's or related party's acquisition of the qualified property  
9 from the lessor, or successor lessor, shall be treated as a  
10 disposition by the lessee of the qualified property that was subject  
11 to the lease under subdivision (e).

12 (3) For purposes of determining the qualified cost paid or  
13 incurred by a lessee in any leasing transaction that is treated as  
14 a sale under Part 1 (commencing with Section 6001), the following  
15 rules shall apply:

16 (A) Subparagraph (A) of paragraph (1) of subdivision (b) shall  
17 be applied by substituting the term "purchase" for the term  
18 "construction, reconstruction, or acquisition."

19 (B) The requirement of subparagraph (B) of paragraph (1) of  
20 subdivision (b) shall be treated as satisfied at the time that either  
21 the lessor or the qualified taxpayer pays sales or use tax under  
22 Part 1 (commencing with Section 6001).

23 (4) (A) In the case of any leasing transaction described in  
24 paragraph (2), the lessor shall provide a statement to the lessee  
25 specifying the amount of the lessor's original cost of the qualified  
26 property and the amount of that cost upon which a sales or use  
27 tax was paid within 45 days after the close of the lessee's taxable  
28 year in which the credit is allowable to the lessee under this  
29 section.

30 (B) The statement required under subparagraph (A) shall be  
31 made available to the Franchise Tax Board upon request.

32 (d) No credit shall be allowed if the qualified property is  
33 removed from the state, is disposed of to an unrelated party, or is  
34 used for any purpose not qualifying for the credit provided in this  
35 section in the same taxable year or the first taxable year following  
36 the taxable year in which the qualified property is first placed in  
37 service in this state. If any qualified property for which a credit is  
38 allowed pursuant to this section is thereafter removed from this  
39 state, disposed of to an unrelated party, or used for any purpose  
40 not qualifying for the credit provided in this section within one

1 year from the date the qualified property is first placed in service  
2 in this state, the amount of the credit allowed by this section for  
3 that qualified property shall be recaptured by adding that credit  
4 amount to the “tax” of the qualified taxpayer for the taxable year  
5 in which the qualified property is disposed of, removed, or put to  
6 an ineligible use. The sale of stock for which an election was made  
7 or deemed to have been made pursuant to Section 338(g) or  
8 338(h)(10) of the Internal Revenue Code may not be treated as a  
9 disposition of qualified property to an unrelated party for purposes  
10 of this subdivision.

11 (e) In the case where the credit allowed under this section  
12 exceeds the “tax,” the excess may be carried over to reduce the  
13 tax in the following taxable year, and the succeeding eight taxable  
14 years, until the credit is exhausted.

15 (f) The Franchise Tax Board may prescribe those rules and  
16 regulations that may be necessary to carry out the purposes of this  
17 section.

18 (g) This section shall remain in effect only until December 1,  
19 2015, and as of that date is repealed.

20 SEC. 2. This act provides for a tax levy within the meaning of  
21 Article IV of the Constitution and shall go into immediate effect.

22 SECTION 1. Section 19195 of the Revenue and Taxation Code  
23 is amended to read:

24 19195. (a) (1) ~~Notwithstanding any other provision of law,~~  
25 ~~including Section 6254.21 of the Government Code, the Franchise~~  
26 ~~Tax Board shall make available, as a matter of public record, each~~  
27 ~~calendar year a list of the 250 largest tax delinquencies that are in~~  
28 ~~excess of one hundred thousand dollars (\$100,000) under Part 10~~  
29 ~~and Part 11 of this division, as of December 31 of the preceding~~  
30 ~~year.~~

31 (2) ~~For purposes of compiling the list, a tax delinquency means~~  
32 ~~the total amount owed by a taxpayer to the State of California for~~  
33 ~~which a notice of state tax lien has been recorded in any county~~  
34 ~~recorder’s office in this state, pursuant to Chapter 14 (commencing~~  
35 ~~with Section 7150) of Division 7 of Title 1 of the Government~~  
36 ~~Code.~~

37 (b) ~~For purposes of the list, a tax delinquency does not include~~  
38 ~~any of the following and may not be included on the list:~~

1     ~~(1) A delinquency for which payment arrangements have been~~  
2 ~~agreed to by both the taxpayer and the Franchise Tax Board and~~  
3 ~~the taxpayer is in compliance with the arrangement.~~

4     ~~(2) A delinquency for which the taxpayer has filed for~~  
5 ~~bankruptcy protection pursuant to Title 11 of the United States~~  
6 ~~Code.~~

7     ~~(3) A delinquency for which the person or persons liable for the~~  
8 ~~tax have contacted the Franchise Tax Board and for which~~  
9 ~~resolution of the tax delinquency has not been rejected by the~~  
10 ~~Franchise Tax Board.~~

11     ~~(e) Each annual list shall, with respect to each delinquency,~~  
12 ~~include all the following:~~

13         ~~(1) The name of the person or persons liable for payment of the~~  
14 ~~tax and that person's or persons' address.~~

15         ~~(2) The amount of tax delinquency, as shown on the notice or~~  
16 ~~notices of state tax lien and any applicable interest or penalties,~~  
17 ~~less any amounts paid.~~

18         ~~(3) The earliest date that a notice of state tax lien was filed.~~

19         ~~(4) The type of tax that is delinquent.~~

20     ~~(d) Prior to making a tax delinquency a matter of public record,~~  
21 ~~as required by this section, the Franchise Tax Board shall provide~~  
22 ~~a preliminary written notice to the person or persons liable for the~~  
23 ~~tax by certified mail, return receipt requested. If within 30 days~~  
24 ~~after issuance of the notice, the person or persons do not remit the~~  
25 ~~amount due or make arrangements with the Franchise Tax Board~~  
26 ~~for payment of the amount due, the tax delinquency shall be~~  
27 ~~included on the list.~~

28     ~~(e) The annual list described in subdivision (a) shall include the~~  
29 ~~following:~~

30         ~~(1) The telephone number and address of the Franchise Tax~~  
31 ~~Board office to contact if a person believes placement of his or~~  
32 ~~her name on the list is in error.~~

33         ~~(2) The aggregate number of persons that have appeared on the~~  
34 ~~list who have satisfied their delinquencies in their entirety and the~~  
35 ~~dollar amounts, in the aggregate, that have been paid attributable~~  
36 ~~to those delinquencies.~~

37     ~~(f) As promptly as feasible, but no later than five business days~~  
38 ~~from the occurrence of any of the following, the Franchise Tax~~  
39 ~~Board shall remove that taxpayer's name from the list of tax~~  
40 ~~delinquencies:~~

- 1     ~~(1) Tax delinquencies for which the person liable for the tax~~  
2     ~~has contacted the Franchise Tax Board and resolution of the~~  
3     ~~delinquency has been arranged.~~  
4     ~~(2) Tax delinquencies for which the Franchise Tax Board has~~  
5     ~~verified that an active bankruptcy proceeding has been initiated.~~  
6     ~~(3) Tax delinquencies for which the Franchise Tax Board has~~  
7     ~~verified that a bankruptcy proceeding has been completed and~~  
8     ~~there are no assets available with which to pay the delinquent~~  
9     ~~amount or amounts.~~  
10    ~~(4) Tax delinquencies that the Franchise Tax Board has~~  
11    ~~determined to be uncollectible.~~  
12    ~~(g) A person whose delinquency appears on the annual list, and~~  
13    ~~who satisfies that delinquency in whole or in part, may request the~~  
14    ~~Franchise Tax Board to include in its annual list any payments that~~  
15    ~~person made to satisfy the delinquency. Upon receipt of that~~  
16    ~~request, the Franchise Tax Board shall include those payments on~~  
17    ~~the list as promptly as feasible.~~